

**FOR FURTHER INFORMATION CONTACT:** Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1279.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since the publication of the preliminary results of this review (see *Pure Magnesium from Canada; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 68 FR 20112 (April 24, 2003) (“*Preliminary Results*”)), the following events have occurred:

The Department of Commerce (“the Department”) invited interested parties to comment on the preliminary results of this review. No comments were received.

**Scope of the Order**

The product covered by this order is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule (“HTS”). The HTS item number is provided for convenience and for customs purposes. The written description of the scope of the order remains dispositive.

**Period of Review**

The period of review (“POR”) is August 1, 2001, through July 31, 2002.

**Fair Value Comparisons**

To determine whether sales of pure magnesium from Canada to the United States were made at less than normal value (“NV”), we compared export price (“EP”) to NV. Our calculations followed the methodologies described in the *Preliminary Results*.

**Final Results of the Review**

As a result of this review, we determine that the following percentage weighted-average margin exists for the period August 1, 2001, through July 31, 2002:

Manufacturer/Exporter	Margin
Norsk Hydro Canada Inc. ....	0.01 ( <i>de minimis</i> )

**Assessment Rates**

The Department shall determine, and the United States Bureau of Customs

and Border Protection (“BCBP”) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

Pending the final disposition of a NAFTA panel appeal by NHCI, the Department will not order the liquidation of entries of pure magnesium from Canada exported by NHCI on or after August 1, 2000, at this time. Liquidation will occur at the rates described in these final results of review following the final judgement in the NAFTA panel appeals process.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon the publication of this notice of final results of administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by 751(a)(1) of the Act: (1) For NHCI, which has a *de minimis* rate, no antidumping duty deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other exporters will continue to be 21.00 percent, the “all others” rate made effective by the less-than-fair-value investigation.

These deposit instructions will remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding APOs**

This notice also serves as the only reminder to parties subject to the administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2003.

**Joseph A. Spetrini,**  
*Acting Assistant Secretary for Grant Aldonas,*  
*Under Secretary.*

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-475-824]

**Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

**SUMMARY:** In response to a request from ThyssenKrupp Acciai Speciali Terni S.p.A. (“TKAST”), a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. (“TKAST USA”), an importer of subject merchandise, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (“SSSS”) from Italy. This review covers imports of subject merchandise from TKAST.

The Department preliminary determines that SSSS from Italy has been sold in the United States at less than normal value during the period of

review ("POR"). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to assess antidumping duties equal to the difference between constructed export price and normal value.

**EFFECTIVE DATE:** August 7, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Bertrand or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-3207 or 202-482-3434, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172, (July 1, 2002). On July 29, 2002, TKAST requested that the Department conduct an administrative review of the antidumping duty order. On August 27, 2002, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002).

On August 30, 2002, the Department issued an antidumping duty questionnaire to TKAST. On October 4, 2002, TKAST submitted its response to Section A of the questionnaire. TKAST requested in its October 4, 2002, Section A response at page A-4, that TKAST not be required to report the downstream sales of all affiliated parties but only report certain downstream sales. October 18, 2002, the Department sent TKAST a letter in which it allowed TKAST to report on certain downstream sales. See Letter from Department to TKAST dated October 18, 2002. Also in its October 4, 2002, Section A response at page A-4, TKAST requested, that with regard to the U.S. sales, it not be required to report the downstream sales of a certain affiliate and that TKAST was also unable to determine if any downstream sales were made by a certain affiliate to an unaffiliated party. In its October 18, 2003, letter to TKAST, the Department stated that TKAST was required to report all of TKAST's

affiliate's resales to unaffiliated customers in the United States.

On October 15, 2002, TKAST submitted its responses to Sections B, C and D of the questionnaire. The Department issued its supplemental section A questionnaire on December 20, 2002, and on January 17, 2003, TKAST submitted its supplemental Section A response. On February 4, 2003, the Department issued its supplemental Section B questionnaire and on February 28, 2003, TKAST submitted its supplemental Section B response. The Department issued its supplemental Section C questionnaire on February 26, 2003, and on March 25, 2003, TKAST submitted its supplemental Section C response. On March 12, 2003, TKAST submitted an updated Section D response. On March 21, 2003, the Department issued its supplemental Section D questionnaire to TKAST. On April 18, 2003, TKAST submitted its supplemental Section D response. The Department issued its second supplemental Sections A-C questionnaire on April 23, 2003, and its third supplemental Sections A-C questionnaire on May 20, 2003. TKAST submitted the second supplemental Sections A-C response on May 13, 2003, and the third supplemental Sections A-C response on May 23, 2003. On May 13, 2003, the Department issued the second supplemental Section D questionnaire, and TKAST submitted its second supplemental section D response on May 27, 2003.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On March 24, 2003, the Department extended the time limit for the preliminary results in this administrative review by 120 days. See *Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 68 FR 14196 (March 24, 2003).

**Period of Review**

The POR is July 1, 2001, through June 30, 2002.

**Verification**

As provided in section 782(i) of the Act, the Department conducted a sales and cost verification of the information provided by TKAST, from June 9, 2003, through June 16, 2003, and a constructed export price ("CEP") verification from May 28, 2003, through May 30, 2003, using standard verification procedures, including an

examination of relevant sales, cost, and financial records, and a selection of relevant original documentation. Our verification results are outlined in the Report on the Sales and Cost Verification of ThyssenKrupp Acciai Speciali Terni S.p.A. (July 21, 2003) ("*Sales and Cost Verification Report*"), and Verification of Constructed Export Price Sales for ThyssenKrupp Acciai Speciali Terni USA, Inc. (July 29, 2003) ("*CEP Verification Report*"). Public versions of the verification reports are on file in the Central Records Unit, room B-099 of the Herbert C. Hoover Department of Commerce building, 1401 Constitution Avenue, NW., Washington, DC.

**Scope of the Review**

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,<sup>1</sup> 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060,

<sup>1</sup> Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080.

Although the HTS subheadings are provided for convenience and BCBP purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs.

Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."<sup>2</sup>

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is

<sup>2</sup> "Arnokrome III" is a trademark of the Arnold Engineering Company.

currently available under proprietary trade names such as "Gilphy 36."<sup>3</sup>

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."<sup>4</sup>

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).<sup>5</sup> This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."<sup>6</sup> The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"<sup>7</sup> steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of

<sup>3</sup> "Gilphy 36" is a trademark of Imphy, S.A.

<sup>4</sup> "Durphynox 17" is a trademark of Imphy, S.A.

<sup>5</sup> This list of uses is illustrative and provided for descriptive purposes only.

<sup>6</sup> "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd.

<sup>7</sup> "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."<sup>8</sup>

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all SSSS products covered by the "Scope of the Review" section of this notice, *supra.*, which were produced and sold by TKAST in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of SSSS products. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

### Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, TKAST requested a CEP offset with respect to its CEP sales in the United States. For further discussion on CEP offset, *see* the "Level of Trade" section, *infra.* Based on the information on the record, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales. TKAST reported that it sold the subject merchandise in the United States through two channels (*i.e.*, channel one, and channel two). With respect to channel one sales, TKAST reported that these sales are shipped directly from the factory in Italy to the U.S. customer. However, TKAST USA, TKAST's U.S. based affiliated reseller,

serves as the principal point of contact for the U.S. customer. For channel one sales, customers place their orders with TKAST USA, which then places an order with TKAST. Upon confirmation from TKAST, TKAST USA separately issues an invoice to the customer. TKAST USA is solely responsible for collecting payment from the U.S. customer, and separately responsible for paying TKAST for the merchandise. TKAST USA separately invoiced and received payment from those customers. Channel two sales are made from the inventory of TKAST USA. Accordingly, the Department preliminarily determines that TKAST's channel one and two sales were made "in the United States" within the meaning of section 772(b) of the Tariff Act of 1930, as amended ("the Act") and should be treated as CEP transactions, consistent with *AK Steel Corp. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated CEP in accordance with section 772(b) of the Act. We based CEP on the packed prices to the first unaffiliated purchaser in the United States. We made adjustments to the starting price for billing adjustments, the alloy surcharge, skid charges and freight revenue, where applicable. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: International freight, U.S. inland freight from warehouse/plant to the unaffiliated customer, other U.S. transportation expense, U.S. Customs duties, and inland freight from the plant/warehouse to port of exit. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, technical services expenses, inventory carrying costs, and other indirect selling expenses.

For U.S. indirect selling expenses, TKAST provided the Department with a recalculated indirect selling expense ratio on page 12 of its May 13, 2003 response. However, TKAST did not revise the computer database to reflect this recalculated ratio; therefore, the Department has revised the computer programs to use the recalculated U.S. indirect selling expense ratio. *See* May 13, 2003 response at page 12 and *Analysis for the Preliminary Results of Review of Stainless Steel Sheet and Strip in Coils from Italy*, ("Analysis Memorandum"), dated July 31, 2003 at 3. In addition, we disallowed TKAST's claimed insurance revenue for certain U.S. sales based on the fact that the insurance payments did not represent additional revenue, but only

reimbursement for the costs associated with these insurance claims. *See CEP Verification Report* at pages 9–14, and *Analysis Memorandum* at 3.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

### Normal Value

After testing home market viability, as discussed below, we calculated normal value ("NV") as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

#### 1. Home Market Viability

In accordance with section 773(a)(1)(c) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared TKAST's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (c) of the Act, because TKAST's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Italy, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the constructed export price ("CEP") sales, as appropriate.

#### 2. Arm's-Length Test

TKAST reported that during the POR, it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded them from our analysis because we considered them to be

<sup>8</sup> "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

outside the ordinary course of trade. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers, net of all billing adjustments, rebates, movement charges, direct selling expenses, and home market packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. See 19 CFR 351.403(c).<sup>9</sup> While TKAST made sales to affiliated parties in the home market during the POR, the Department determined that TKAST only needed to report certain affiliated customer's downstream sales. See Background Section *supra.*, and TKAST's October 4, 2002 Section A response at page A-3 through A-4. We ran the arm's length test on the remaining sales to affiliated parties and excluded those sales which failed the arm's length test, but we did not require TKAST to report the downstream sales of these affiliates as TKAST was reporting the downstream sales of affiliate(s) that comprised the vast majority of affiliated sales. See Background Section *supra.* In our home market NV calculation, we have included TKAST's reported downstream sales.

### 3. Cost of Production

In the original investigation, the Department determined that TKAST made sales in the home market at prices below the COP and, therefore, excluded such sales from NV. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30754-55 (June 8, 1999). Accordingly, the Department had reasonable grounds to believe or suspect that TKAST made sales in the home market at prices below the COP for this POR. See section 773(b)(2)(A)(ii) of the Act. As a result, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by TKAST.

#### A. Calculation of the COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of TKAST's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expenses, and packing costs. We relied on the COP data submitted by TKAST in its original

and supplemental cost questionnaire responses and findings at verification.

#### B. Test of Home Market Prices

We compared the weighted-average COP for TKAST to its home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

#### C. Results of the COP Test

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of TKAST's sales of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of TKAST's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act. In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

#### D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value ("CV") based on the sum of TKAST's cost of materials, fabrication, SG&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by TKAST in connection with the

production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

#### Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where appropriate, we deducted early payment discounts, rebates, credit expenses, warranty expenses, and inland freight.

We revised the credit expense for sales that had an early payment discount because TKAST reported a payment date based on the terms of payment instead of one reflective of the early payment date. See *Sales and Cost Verification Report* at pages 15-16, and *Analysis Memorandum* at 2. We also revised the reported credit expense for the home market sales which TKAST factored with a financial institution. For the invoices that were factored, the financial institution, usually a bank, "purchased" TKAST's invoices and paid TKAST the value of the invoices at the time of factoring, which occurs about once a month. TKAST then collected payment from the customer, according to the regular payment terms of the sale, and TKAST in turn re-paid the bank. The bank charged two fees for this service, which were a fixed commission based on the value of the invoice and interest. See TKAST's supplemental Section B response dated February 28, 2003, at pages 5 and 6 and *Sales and Cost Verification Report* at 20.

TKAST reported that it was unable to report actual payment dates for its home market sales because the payment information is recorded in an accounts receivable system and cannot be linked directly with the invoicing system. Therefore, in the payment date field in the response, TKAST used the payment term dates and not the date the customer actually paid TKAST. See TKAST's Section B response dated October 15, 2002, at page B-17. Although TKAST cannot electronically track invoices and customer payment dates, we believe TKAST would be able to determine the actual payment date for a sale if it conducted a manual review of its records. See *Sales and Cost Verification Report* at 20.

For this administrative review, we are not requiring TKAST to conduct a manual review of every sale in order to

<sup>9</sup> Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69197 (November 15, 2002).

report the actual date on which the customer pays TKAST. However, in any subsequent administrative review, the Department will expect TKAST to report the actual date on which the customer paid TKAST. Also, in this administrative review for the home market credit expense, we used the actual credit expense reported by TKAST, which included the commission and interest expenses actually paid by TKAST to the factoring bank, and allocated it over the home market sales that were factored. We determined this was appropriate because TKAST did not report the payment date on which it was actually paid by the customer, but it did report the actual credit expense, therefore calculating an imputed credit expense is unnecessary. *See Analysis Memorandum* at pages 2–3.

We also adjusted the starting price for billing adjustments, alloy surcharge, skid charges, and freight revenue. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding twenty percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV.

#### *Price-to-CV Comparisons*

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses ("SG&A"), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

#### *Level of Trade*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of

the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the LOT is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1). As noted in the "Export Price/Constructed Export Price" section, *supra*, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In the present administrative review, TKAST requested a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

TKAST reported one LOT in the home market, with two channels of distribution: (1) Direct factory sales to end-users, manufacturers, service centers and distributors; and (2) warehouse sales to end-users, service centers and distributors. TKAST performed the same selling functions for sales in both home market channels of distribution, including production guidance, price negotiations, sales calls and services, arranging for freight and

delivery, technical assistance and general selling activities. *See* TKAST's October 4, 2002 Section A response. The only differences are that for warehouse sales, TKAST initiates the sale (whereas direct sales are initiated by either party), and conducts inventory maintenance, and that warehouse sales typically carry no guarantee or warranty. Accordingly, because these selling functions are substantially similar for both channels of distribution, we preliminarily determine that there is one LOT in the home market.

TKAST reported two channels of distribution for the U.S. market: (1) Direct factory sales through TKAST USA to end-users and service centers; and (2) warehouse sales from the inventory of TKAST USA to end-users and service centers. We reviewed the selling functions and services performed by TKAST in the U.S. market, as represented by TKAST in its section A response and verification findings. We have determined that the selling functions for the two U.S. channels of distribution are similar because TKAST provides almost no selling functions to either U.S. channel of distribution. TKAST reported that the only services it provided for the CEP sales were very limited freight and delivery arrangements and very limited warranty services. *See* TKAST's October 4, 2002 Section A response at page A–25 and TKAST's January 17, 2003 Supplemental Section A response at Exhibit 42. Accordingly, because these selling functions are substantially similar for the two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between TKAST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. *See* TKAST's October 4, 2002 Section A response at page A–25 and TKAST's January 17, 2003 Supplemental Section A response at Exhibit 42. TKAST reported that it provided virtually no selling functions for the CEP level of trade and that, therefore, the home market level of trade is more advanced than the CEP level of trade. To determine whether a CEP offset was

necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home market LOT was at a more advanced stage of distribution when compared to TKAST's CEP sales because TKAST provides many more selling functions in the home market (*i.e.*, production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities) as compared to selling functions performed for its CEP sales (*i.e.*, very limited freight and delivery arrangements and very limited warranty services). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that the LOT in the home market did not match the LOT of the CEP transactions. Accordingly, we did not calculate a LOT adjustment. Instead, we applied a CEP offset to the NV for CEP comparisons. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We therefore limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the POR:

Producer/manufacturer/exporter	Weighted-average margin (Percent)
ThyssenKrupp Acciai Speciali Terni S.p.A. ....	1.54

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties to this proceeding the calculations performed in connection

with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments and/or case briefs on these preliminary results. Comments and case briefs must be submitted no later than thirty days after the date of publication of this notice. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and must be submitted no later than five days after time limit for filing case briefs and comments. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within thirty days of the date of publication of this notice, an interested party may request a public hearing on the arguments to be raised in the case and rebuttal briefs and comments. See 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

**Assessment Rates**

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication

date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 11.23 percent, which is the "all others" rate established in the LTFV investigation. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 40567 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this administrative review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

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**BILLING CODE 3510-DS-P**